IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2859 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R V ZALA

Versus

COMMISSIONER OF TRANSPORT

Appearance:

1. Special Civil Application No. 2859 of 1994

MR PK JANI for Petitioner No. 1

MS SANGITA VISHEN, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 14/07/2004

ORAL JUDGEMENT

The petitioner was appointed as an Assistant Motor Vehicle Inspector by an order dated 14th April, 1988. By a subsequent order dated 18th September, 1992,

the services of the petitioner were terminated by the department by relying upon the provisions of Section 33 (1) of the Bombay Civil Services Rules. At the relevant time, the petitioner was serving as an Assistant Motor Vehicle Inspector. The services of the petitioner were terminated on the ground that at the time of his selection and appointment, the petitioner was not fulfilling the requirements as per recruitment rules and he was not holding a valid driving licence of a heavy transport vehicle. The said termination order was challenged by the petitioner by way of an appeal, being Appeal No.432/1992, before the Gujarat Civil Services Tribunal. The case of the appellant before the tribunal was that he was holding valid driving licence issued by the District Transport Officer, Badmer, Rajasthan and he had produced such licence before the Gujarat Public Service Commission and on that basis, he was selected.

2) The department, however, by a yadi dated 21-05-1992, informed the petitioner that while resuming his duty, he had produced a duplicate licence issued by R.T.O., Palanpur, on his representation that his original licence was torn and a duplicate licence may be issued to him. The department was of the opinion that the petitioner has produced a fake licence and as he was not holding a valid licence, which is required as per the rules and, the petitioner has obtained appointment by way of making false representation.

3) The tribunal has remanded the matter to the authority for passing fresh order and observed as under :

> "The appeal is partly allowed and the impugned order dated 18-9-1992 of the respondent is hereby quashed and set aside and the matter is remanded back to the respondent for giving opportunity of hearing to the appellant after furnishing the appellant with the copies of the letters stated in his application dt.24-8-1992 with a view that there may not be repetition of the events, as in the past. The appellant is directed to submit his reply, evidence, etc. directly to the respondent, preferrably by hand delivery. After the appellant is furnished with the copies of letters stated in his letter dt.24.8.1992, he should furnish his reply along with the proof of his holding a valid driving licence for the required period, as called upon, within one month. Thereafter, the date for personal hearing may be fixed, with intimation to the applicant and the matter may be finally decided by the

respondent after such date. On hearing the appellant, the respondent should pass a speaking order. It is also ordered that the appellant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of termination of service and shall continue to remain under suspension until further orders. The respondent is directed to be particular to arrange for payment of subsistence allowance to the appellant according to rules in force and further proceedings should be resorted to after payment of such subsistence allowance."

4) It is the aforesaid order of the tribunal, which is impugned in this petition. In this petition, even the original order of termination is also challenged by the petitioner.

5) Mr.Unwala, learned advocate for the petitioner, vehemently submitted that while setting aside the order of termination, the tribunal should not have observed that the petitioner should be deemed to be under suspension from the date of passing the termination order. He submitted that, therefore, the order of the tribunal is contrary to law and without jurisdiction.

6) As against that Ms.Sangita Vishen, learned AGP, has submitted that the petitioner had obtained the appointment by way of producing fake driving licence, though he was not holding any licence at the time of his appointment and, therefore, his appointment is vitiated, as the same was obtained by fraudulent act.

7) At the time of admitting this petition, this Court has granted interim relief in favour of the petitioner and the petitioner continued to remain in service.

8) By the impugned order, the tribunal has remanded the matter to the department by which the petitioner is given opportunity of representing his case before the department to show whether he has secured appointment by producing valid licence or not. In my view, so far as the said remand order of the tribunal is concerned, that part of the order is not required to be interfered with by this Court, as, ultimately, it is for the department to pass appropriate order and before passing such order, the petitioner may be given opportunity of hearing, as observed by the tribunal.

9) As by the impugned order, mainly the matter is remanded to the department, such order is not required to be interfered with by this Court in a petition filed under Article 227 of the Constitution of India. However, since interim relief is operating in favour of the petitioner, at this stage, instead of disturbing the same, interim relief given by this Court is ordered to be continued till the department takes a final decision as per the order of the tribunal. The department may take appropriate final decision at the earliest and, in any case, by 31st October, 2004.

10) At this stage, Ms.Sangita Vishen, learned AGP, submitted that there is a subsequent development in this case. According to her, as the petitioner was involved in some cases, he is placed under suspension by the department. If that be so, naturally, interim relief granted by this Court cannot operate as ultimately, the petitioner is placed under suspension subsequently.

11) Mr.Unwala learned advocate for the petitioner submitted that in connection with the fake licence one case was lodged against the petitioner and C-summary is already submitted by the police. However, all these aspects are required to be considered by the department at the time of taking final decision and this Court is not required to express its opinion in this behalf.

12) As these proceedings are very old and ten years have passed since the filing of this petition, the same may be put to an end at the earliest. Mr.Unwala has assured the Court that his client will cooperate with the early disposal of the proceedings.

13) Accordingly, this petition is disposed of. Rule is discharged. No costs.

(P.B.Majmudar,J.)

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